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No. 80-1236

In the Supreme Court of the United States

OCTOBER TERM, 1980

MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., ET AL., PETITIONERS

v.

ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether a federal district court, in a "citizen suit" brought under Section 304(a) of the Clean Air Act, has jurisdiction to enjoin the enforcement of nationally applicable regulations promulgated under that Act by the Administrator of the Environmental Protection Agency, when Section 307(b)(1) of the Act provides that a petition for review of such regulations shall be filed "only" in the United States Court of Appeals for the District of Columbia Circuit.

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v.

ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 13a-18a) is not reported. The opinion of the district court (Pet. App. 1a-7a) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on September 19, 1980. Rehearing was denied on October 23, 1980 (Pet. App. 21a-22a). The petition for a writ of certiorari was filed on January 21, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

Sections 207, 304, and 307(b) of the Clean Air Act, 42 U.S.C. (Supp. III) 7541, 7604, 7607(b), are set forth in the petition (Pet. App. 27a-38a).

STATEMENT

1. Sections 202-216 of the Clean Air Act, 42 U.S.C. (Supp. III) 7521-7550, establish a scheme for the regulation of emissions from new motor vehicles. Section 202 empowers the Administrator of the Environmental Protection Agency ("the Administrator" or "EPA") to prescribe standards limiting the emission of certain air pollutants from new motor vehicles. 42 U.S.C. (Supp. III) 7521.

As one means of ensuring that motor vehicles maintain compliance with EPA's emission standards throughout their useful lives, Section 207(b) of the Act requires that vehicle manufacturers provide a performance warranty. 42 U.S.C. (Supp. III) 7541(b). Congress first enacted this warranty provision as part of the Clean Air Amendments of 1970, Pub. L. No. 91-604, 84 Stat. 1676, 1696; it was amended by Section 209(a) and (c) of the Clean Air Act Amendments of 1977, Pub. L. No. 95-95, 91 Stat. 685, 756. The manufacturer's performance warranty comes into play if a vehicle fails a state emission inspection and maintenance ("I/M") test at any time during the vehicle's useful life. If the vehicle owner is subject to sanction or penalty under state law for the failure of his vehicle to pass the test, then under the performance warranty, the automobile manufacturer must remedy the nonconformity at its expense, provided the owner has complied with the manufacturer's instructions for proper maintenance and use of the vehicle.

Section 207(b)(1) required the Administrator to issue regulations implementing the performance warranty, after making two sets of findings. These findings relate only to the availability of testing methods and procedures for use in the state I/M programs and the availability of facilities for conducting the state tests.

In 1977 Congress enacted several provisions designed to offset any potential anticompetitive effects associated with the warranty. Among other things, these provisions required

creation of a voluntary parts certification program, through which independent parts manufacturers could certify that use of their parts would not invalidate the warranty.[1] Sections 207(a)(2) and 207(b), 42 U.S.C. (Supp. III) 7541(a)(2) and 7541(b). Implementation of the parts certification program was not made a prerequisite to the promulgation of the warranty regulations.

The 1977 Amendments also provided the Administrator with additional authority to regulate the manufacturers' instructions for maintenance and use. Prior to the 1977 Amendments, Section 207(c)(3) of the Act required vehicle manufacturers to furnish purchasers with "such written instructions for the maintenance and use of the vehicle or engine by the ultimate purchaser as may be reasonable and necessary to assure the proper functioning of emission control devices and systems." 42 U.S.C. 1857f-5a(c)(3).[2] The 1977 Amendments replaced the "reasonable and necessary" language with a requirement that the maintenance and use instructions simply "correspond to regulations which the Administrator shall promulgate." Section 207(c)(3), 42 U.S.C. (Supp. III) 7541(c)(3).

2. The Administrator made all the necessary findings relating to the testing methods and procedures for the state I/M tests (45 Fed. Reg. 34802 (1980)), and all necessary findings concerning the availability of facilities and equipment for conducting such tests (*id.* at 34830). Under the Act, therefore, the Administrator was required to promulgate the warranty regulations, which he did on May 22, 1980. 45

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[1]See S. Rep. No. 95-127, 95th Cong., 1st Sess. 81, 82 (1977).

[2]Pursuant to that provision, the manufacturers submitted proposed instructions to the Administrator; the Administrator evaluated the proposed maintenance instructions and advised the manufacturers whether they satisfied the "reasonable and necessary" requirement. 40 C.F.R. 86.077-39 (1976).

Fed. Reg. 34829 (1980). The warranty took effect with the 1981 model year, the model year beginning after the regulations were promulgated.

3. On July 19, 1980, petitioners filed this suit in the United States District Court for the Eastern District of Michigan, seeking: (1) a writ of mandamus ordering the Administrator to issue the voluntary parts certification regulations provided for in Section 207(a)(2), and maintenance instruction regulations under Section 207(c)(3);[3] (2) a declaration that the parts certification and maintenance regulations were necessary prerequisites to the promulgation of the warranty regulations; and (3) an injunction against enforcement of the warranty regulations pending issuance of parts certification and maintenance regulations. Petitioners alleged that the district court had jurisdiction under the Mandamus Act, the Declaratory Judgment Act, the Administrative Procedure Act, Section 304 of the Clean Air Act, 42 U.S.C. (Supp. III) 7604 (the citizen suit provision) and 28 U.S.C. 1331. The Administrator did not deny that the district court had jurisdiction to issue a writ of mandamus ordering the promulgation of parts certification and maintenance regulations, but urged that Section 307(b)(1), 42 U.S.C. (Supp. III) 7607(b)(1), granted exclusive jurisdiction to the United States Court of Appeals for the District of Columbia Circuit to review nationally applicable regulations such as the warranty regulations.

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[3]At the time of the district court action, the Administrator had not yet issued the parts certification regulations; he issued those regulations on November 25, 1980. 45 Fed. Reg. 78448. Contrary to petitioners' arguments, the Administrator had issued maintenance regulations prior to the district court action as part of the warranty regulations. 40 C.F.R. 85.2102, 45 Fed. Reg. 34839 (1980). These regulations included the "reasonable and necessary" requirement that had previously been mandated by Section 207(c)(3). The maintenance regulations that EPA announced were to be postponed (45 Fed. Reg. 44117 (1980)), and that petitioners refer to (Pet. 3), are *additional* maintenance regulations, which the Administrator may issue in the future.

The district court found that it had jurisdiction under each of the statutes cited by petitioners (Pet. App. 2a, 9a-10a). The district court concluded that there were no parts certification and maintenance instruction regulations (Pet. App. 4a-5a, 10a), but declined to issue the requested writ of mandamus (Pet. App. 10a-11a). Instead, disregarding Section 307(b)(1) of the Act, the district court reviewed the performance warranty regulations and issued an order containing (1) a declaratory judgment that the Administrator could not promulgate the warranty regulations in the absence of parts certification and maintenance regulations and (2) an injunction against enforcement of the warranty regulations until parts certification and maintenance regulations had been issued (Pet. App. 9a-11a).

The Administrator requested and received an emergency hearing before the court of appeals. The Sixth Circuit held that the district court lacked jurisdiction to issue either its declaratory judgment or its injunction. The court concluded (Pet. App. 17a):

> The district court reviewed the performance warranty regulations when it decided that the parts certification and maintenance regulations were necessary preceding conditions for the issuance of the performance warranty regulations. It is that review or any other review of the regulation which is barred by Section 307(b)(1).

The Sixth Circuit promptly vacated the district court's order[4] and ordered the case transferred to the United States

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[4]Petitioners' assertions that the Sixth Circuit left the district court's declaratory judgment intact (Pet. 6), and that "[r]eview of the * * * declaratory judgment is now before the Sixth Circuit" (Pet. 7 n.5), make little sense. The Sixth Circuit stated that it was vacating "[t]he district court's order" (Pet. App. 18a). The district court issued only one order. That the Sixth Circuit did not describe each portion of the order it vacated is of no consequence. *Hynning* v. *Partridge*, 359 F. 2d 271 (D.C. Cir.), cert. denied, 385 U.S. 922 (1966).

Court of Appeals for the District of Columbia Circuit (Pet. App. 13a-18a); rehearing was denied without opinion (Pet. App. 21a-22a).

On December 15, 1980, the District of Columbia Circuit transferred the case back to the Sixth Circuit, stating that it lacked jurisdiction to review a decision of any district court other than the United States District Court for the District of Columbia (Pet. App. 23a).[5]

ARGUMENT

The Sixth Circuit vacated an order that the district court had no jurisdiction to issue. The decision below is correct and does not conflict with any decision of this Court or any other court of appeals. Moreover, the question of the validity of EPA's performance warranty regulations is currently pending in the United States Court of Appeals for the District of Columbia Circuit on a petition for review filed on July 21, 1978, by some of the petitioners in this case.[6] Accordingly, review by this Court is unwarranted.

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[5]When the record of the case was received by the Sixth Circuit, its clerk "reopened the appeal" and issued a briefing schedule (Pet. App. 25a). On February 4, 1981, however, the court withdrew the briefing schedule (App., *infra*, 1a-2a).

[6]*Motor Vehicle Manufacturers Association of the United States, Inc.* v. *Costle*, No. 80-1828 (D.C. Cir.). In the petition for review, filed two days after the filing of the complaint in the district court in the instant case, the manufacturers challenged the warranty regulations, arguing that the regulations are invalid because they were promulgated in the absence of parts certification and maintenance regulations. All briefs addressing the issues raised by the manufacturers in the District of Columbia Circuit have been filed; the parties are currently awaiting the scheduling of oral argument by that court.

The relief petitioners claim is necessary to protect their interests has been available from the start in the District of Columbia Circuit. Petitioners could have moved to stay enforcement of the warranty regulations under Rule 18 of the Federal Rules of Appellate Procedure pending that court's final decision on their petition for review. *Superior*

1. Section 304(a)(2) grants a federal district court jurisdiction to compel the Administrator to perform a mandatory duty under the Clean Air Act, but does not grant a district court jurisdiction to review the validity of a nationally applicable regulation that the Administrator has already promulgated. The United States Court of Appeals for the District of Columbia Circuit has exclusive jurisdiction to review such regulations. Section 307(b)(1), 42 U.S.C. (Supp. III) 7607(b)(1). Nevertheless, petitioners argue that the district court had jurisdiction to issue its order by virtue of Section 304(a)(2) of the Act, the citizen suit provision.[7] They assert that the district court's order did not concern either the substantive or procedural validity of the warranty regulations and that the court of appeals' decision improperly restricts the relief available in Section 304(a)(2) citizen suits.

Petitioners assert that the district court's order "did not find that [the] warranty regulations are invalid" (Pet. 11), and that the order "has no effect upon the *validity* of the warranty regulations' provisions" but merely suspends their enforcement "until the Administrator has fulfilled all of his statutory nondiscretionary duties under the Act" (Pet. 11-12). The district court's order was based upon its determination that the warranty regulations were improperly promulgated because the Administrator had not previously promulgated two other sets of regulations (Pet. App. 10a).

Trucking Co. v. *United States*, 614 F. 2d 481, 484-485 (5th Cir. 1980); *Associated Securities Corp.* v. *Securities & Exchange Commission*, 283 F. 2d 773 (10th Cir. 1960); *Virginia Petroleum Jobbers Association* v. *Federal Power Commission*, 259 F. 2d 921, 925 (D.C. Cir. 1958).

[7]Petitioners do not challenge the court of appeals' ruling that the other alleged jurisdictional bases for their action in the district court were insufficient (Pet. App. 17a n.4).

Such a determination, concerning the Administrator's statutory authority to promulgate the regulations as a whole, is as much a ruling on the validity of the Administrator's action in promulgating the regulations as would be a ruling on the substance of any of the individual regulations.[8] See *Lubrizol Corp.* v. *Train*, 547 F. 2d 310, 316-318 (6th Cir. 1976); *City of Highland Park* v. *Train*, 519 F. 2d 681, 688-689 (7th Cir. 1975), cert. denied, 424 U.S. 927 (1976); *Oljato Chapter of Navajo Tribe* v. *Train*, 515 F. 2d 654, 660-661 (D.C. Cir. 1975); *Anaconda Co.* v. *Ruckelshaus*, 482 F. 2d 1301, 1304 (10th Cir. 1973); see also *Adamo Wrecking Co.* v. *United States*, 434 U.S. 275, 285 (1978).

2. This Court has ruled that district courts lack jurisdiction to review a challenge to any of the administrative actions covered by Section 307(b)(1).[9] See *Harrison* v. *PPG Industries, Inc.*, 446 U.S. 578 (1980). As the Sixth Circuit explained in analyzing Section 307(b)(1) in *Lubrizol Corp.* v. *Train, supra*, 547 F. 2d at 315:

> By centralizing appeals in the District of Columbia Circuit Court within a limited time period, Congress hoped to avoid needless delays in the implementation

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[8]The weaknesses in petitioners' argument are underscored by the consequences the district court order in this case would have had in the proceedings in the District of Columbia Circuit, if the Sixth Circuit had affirmed. Section 307(b)(1) specifically provides that a petition for review of "nationally applicable regulations promulgated * * * by the Administrator under this Act may be filed *only* in the United States Court of Appeals for the District of Columbia" (Pet. App. 37a; emphasis added). Yet, (1) the relationship between the warranty regulations and the maintenance and parts certification regulations would have already been determined; and (2) the warranty regulations would have already been held invalid. There would have been little for the District of Columbia Circuit to review.

[9]Petitioners have not argued at any stage of this litigation that the warranty regulations do not fall within the items listed in Section 307(b)(1). See also note 6, *supra*.

of important national programs caused by incessant litigation and inconsistent decisions.

Petitioners seek to create an exception to Congress' comprehensive scheme for judicial review by permitting any district court to review final administrative regulations in the context of a citizen suit. Such an exception would permit any party to frustrate Congress' attempt to establish centralized, uniform review of nationally applicable regulations (and seriously hamper the implementation of EPA's overall air program), merely by premising an attack upon a disliked regulation on the Administrator's failure to take some other action that is related to the national regulation.

Petitioners claim that because of the court of appeals' ruling "a citizen may seek only a *limited* mandamus remedy in the district court" (Pet. 16; emphasis added). The court of appeals made no such ruling.[10] Rather, the court of appeals held that, while a district court may compel an agency to perform a mandatory act in a Section 304(a) "citizen suit," a district court has no power to invalidate regulations in such an action. Contrary to petitioners argument (Pet. 16), the court of appeals did not mandate bifurcated review; it correctly followed the procedures prescribed by Congress for seeking relief concerning two entirely different matters. As the Sixth Circuit noted (Pet. App. 17a-18a):

> The district court can fully and completely grant relief for the failure of the Administrator to issue mandatory regulations pursuant to Section 207(a)(2) and Section 207(c)(3) of the Clean Air Act by ordering the Administrator to issue parts certification and maintenance instruction regulations. If it is necessary to

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[10]Section 304 itself limits the relief available in a citizen suit to an order to the Administrator "to perform such [mandatory] act or duty." The language cited by petitioners (Pet. 10) from Section 304(d) refers only to such an order.

> enjoin the enforcement of the performance warranty regulations or to consider their viability, because the performance warranty regulations are invalid without proper parts certification and maintenance regulations, then such actions must be brought pursuant to Section 307(b)(1) in the Court of Appeals for the District of Columbia. This view most appropriately effectuates the purpose of the Act. *Lubrizol Corp.* v. *Train*, 547 F. 2d 310 (6th Cir. 1976).

Petitioners complain that this statutory scheme discourages citizen suits (Pet. 16-17). If the exclusive review provision of Section 307(b)(1) "unfairly" limits the relief available in citizen suits, it is a matter for Congress to remedy by amending the Act. See *Harrison* v. *PPG Industries, Inc., supra*, 446 U.S. at 593.

3. Petitioners claim that the district court's jurisdiction to order the issuance of parts certification and maintenance regulations gave it ancillary jurisdiction to grant declaratory relief and "to issue an injunction based on such declaration and its findings of irreparable injury" (Pet. 18).[11] But this argument ignores the exclusive jurisdiction granted to the District of Columbia Circuit by Section 307(b)(1) of the Act. The district court did not merely declare that the Administrator had a mandatory duty to issue parts certification and maintenance regulations. Rather, the district court declared that the warranty regulations were unenforceable without parts certification and maintenance regulations (Pet. App. 10a). Thus, the court's declaratory judgment, rather than being the "essential equivalent of a writ of

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[11] Petitioners suggest that the court of appeals should have addressed the district court's finding of irreparable harm (Pet. 7, 11, 20-21). The court of appeals' ruling that the district court lacked jurisdiction to issue the order rendered the former powerless to pass on the merits of the case. *United States* v. *Corrick*, 298 U.S. 435, 440 (1936).

mandamus" (Pet. 17), was in reality much more[12]—an exercise of jurisdiction over a matter that Congress has committed to the *exclusive* jurisdiction of the United States Court of Appeals for the District of Columbia.[13] The doctrine of ancillary jurisdiction cannot authorize a court to exercise jurisdiction in a matter that Congress has expressly removed from its jurisdiction. In *Morrow* v. *District of Columbia*, 417 F. 2d 728 (D.C. Cir. 1969), upon which petitioners rely heavily (Pet. 19-20 & n.14), the court specifically noted this restraint upon the assertion of ancillary jurisdiction, stating that such jurisdiction may be exercised only "[i]n the absence of some specific limitation" and, accordingly, that a court must always be guided by "limits on the subject matter of which [it] may take cognizance." 417 F. 2d at 734. As noted, Section 307(b)(1) denies district courts jurisdiction to review nationally applicable regulations such as the warranty regulations.[14]

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[12]Petitioners seem to concede that the district court's order "was something more than just a practical substitute for a writ of mandamus" (Pet. 17).

[13]Petitioners' reliance (Pet. 17 n.10, 18) on *National Treasury Employees Union* v. *Nixon*, 492 F. 2d 587 (D.C. Cir. 1974), is misplaced. Nothing in that decision suggests that a court may invalidate regulations that it has no jurisdiction to review, as the district court did in this case. In *National Treasury Employees Union*, the court of appeals held that the district court had jurisdiction to issue a writ of mandamus requiring the President to take certain action, but concluded that it would be appropriate, under the circumstances, to refrain from issuing the writ.

[14]None of the cases cited by petitioners supports the assertion that a court may use ancillary jurisdiction to override a grant of exclusive jurisdiction to another court. In neither *Milliken* v. *Bradley*, 418 U.S. 717 (1974); *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Brown* v. *Board of Education*, 349 U.S. 294 (1955); *Hecht Co.* v. *Bowles*, 321 U.S. 321 (1944); nor *Riggs* v. *Johnson County*, 73 U.S. (6 Wall.) 166, 168 (1867), was ancillary jurisdiction exercised or even discussed. In *Allee* v. *Medrano*, 416 U.S. 802, 811-816 (1974), this Court sustained a three-judge district court's exercise of ancillary jurisdiction to enjoin unconstitutional police conduct. But the

The Sixth Circuit properly vacated a district court order that the district court lacked jurisdiction to issue. In doing so, the court of appeals properly protected the exclusive jurisdiction which Congress has placed in the District of Columbia Circuit to review the administrative actions listed in Section 307(b)(1) of the Act. The relief petitioners claim is necessary to protect their interests has been available from the start in the District of Columbia Circuit. That petitioners chose not to seek relief there provides no reason to ignore the statutory scheme created by Congress.

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court in *Allee* had not ignored an explicit grant of *exclusive* jurisdiction to another court, as did the district court in this case.

In *Sierra Club* v. *Ruckelshaus*, 344 F. Supp. 253 (D.D.C.), aff'd per curiam, 4 E.R.C. 1815 (D.C. Cir. 1972), aff'd by an equally divided Court, 412 U.S. 541 (1973), the district court enjoined the Administrator of EPA from approving certain state air pollution control plans. See Appendix to the Petition for a Writ of Certiorari at 12a-13a, *Ruckelshaus* v. *Sierra Club*, No. 72-804, 1972 Term. The district court rejected the contention that the appropriate remedy was to seek judicial review of each approval. *Sierra Club* v. *Ruckelshaus*, *supra*, 344 F. Supp. at 254-255. Although the district court concluded that one of the agency's regulations was invalid (*id.* at 256), the court did not consider whether it had jurisdiction to enjoin enforcement of that regulation in light of 42 U.S.C. (1970 ed.) 1857h-5(b). *Sierra Club* v. *Ruckelshaus*, *supra*, therefore provides no support for petitioners in this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MARCH 1981

APPENDIX

UNITED STATES COURT OF APPEALS

SIXTH CIRCUIT
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February 4, 1981

Mr. David Dearing
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Appellate Section
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Washington, D.C. 20530

Re: Case No. 80-1591/80-1604 - Motor Vehicle Manufacturers Association of the United States, Inc.; American Motors Corporation; Chrysler Corporation; Ford Motor Company; General Motors Corporation; Volkswagen of American, Inc.; Ed Bailey, Inc., d/b/a Ed Bailey AMC/Jeep, Plaintiffs-Appellees, vs. Douglas M. Costel, Administrator, United States Environmental Protection Agency, Defendant-Appellant. District Court No. 80-72618

Dear Mr. Dearing:

This letter is to advise you that the briefing schedule set in the above styled case on January 7, 1981 has been withdrawn pending further instructions from the Court.

If you have any questions in this regard, please let us hear from you.

Very truly yours,
John P. Hehman, Clerk

/s/ Yvonne Henderson
By: (Mrs.) Yvonne Henderson
Deputy Clerk

cc: Mr. Theodore Souris
Mr. Thomas Y. Au
Mr. William H. Crabtree
Mr. Kenneth I. Gluckman
Mr. Thomas P. Donohue
Mr. James M. McNee
Mr. Otis M. Smith
Mr. Gerhard P. Riechel